

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

ALLIANT FOOD SERVICE, INC. and
U.S. FOODSERVICE, INC.

Employer¹

and

Case 4–RC–20376

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 628, AFL-CIO

Petitioner²

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce³ within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. *Background*

As of December 2001, Alliant Foodservice, Inc. (herein called Alliant) was a wholesale food distributor with a facility in Swedesboro, New Jersey (herein called the Swedesboro

¹ The name of the Employer appears as corrected at the hearing.

² The name of the Petitioner appears as corrected at the hearing.

³ The parties stipulated that United Food Service, Inc. is engaged in commerce within the meaning of the Act. They further stipulated that, in the 12-month period ending December 31, 2001, Alliant Foodservice, Inc. sold and shipped goods valued in excess of \$50,000 directly to points outside the State of New Jersey, and in that same period, its gross business revenues exceeded \$1,000,000.

Facility). In December 2001, Alliant was acquired by U. S. Foodservice, Inc. (herein called USF) and is now a wholly-owned subsidiary of USF. USF is a national distributor of wholesale food and restaurant supplies. With approximately 100 facilities, USF employs about 35,000 employees, nearly half of them unionized. USF acquired Alliant in November 2001 through a stock purchase that included the Swedesboro Facility. When USF acquired Alliant, it placed the Bridgeport and Swedesboro facilities into a division called the Philadelphia Division.

The Petitioner is the certified bargaining representative of a unit of warehouse employees and truck drivers at the Swedesboro Facility, and there is a collective-bargaining agreement in effect for those employees. At the Employer's nearby facility in Bridgeport, New Jersey (herein called the Bridgeport Facility), there are three represented bargaining units that have collective-bargaining agreements with the Employer: truck drivers, who are represented by Teamsters Local 470; Warehouse Clerks, who are also represented by Teamsters Local 470;⁴ and warehouse employees, who are represented by Teamsters Local 169.

Contentions of the Parties

The Petitioner seeks to represent a unit of all full-time and regular part-time plant clerical employees at the Swedesboro Facility, including the following classifications: Transportation Clerk, Receiving Clerk, Returns and Refusals Clerk,⁵ Cycle Counter,⁶ Slot Coordinator, Warehouse Clerk, Will Call Clerk, and Fleet Maintenance Clerk.⁷ The Employer contends that as a result of USF's acquisition of Alliant and the asserted integration of operations of the two facilities, the Warehouse Clerks at the Swedesboro Facility have been accreted into the existing unit of Warehouse Clerks at the Bridgeport Facility. Based on this accretion, the Employer asserts, the current collective-bargaining agreement between USF and Teamsters Local 470 covering the Bridgeport Warehouse Clerks (herein called the Bridgeport Agreement)⁸ is applicable to the Swedesboro Warehouse Clerks and serves as a bar to an election in the petitioned-for unit. In the alternative, the Employer contends that if there is no accretion and contract bar, the only appropriate unit is a two-facility unit of Warehouse Clerks in the Philadelphia Division, comprising the Warehouse Clerks in both Bridgeport and Swedesboro.⁹ In that event, all of the Warehouse Clerks at both facilities would participate in the election, and Teamsters Local 628 and Teamsters Local 470 would both be on the ballot.

The Employer also asserts that all of the classifications in the petitioned-for unit other than Warehouse Clerks should be excluded for various reasons. The Employer contends that the Returns and Refusals Clerks, Receiving Clerk, and Cycle Counters should be excluded because they have reporting and monitoring functions that place them in an adversarial position to other unit employees. The Employer also contends that the Receiving Clerk should be excluded as an office clerical position. The Employer asserts that the Transportation Clerk position should be

⁴ Immediately after the petition was filed, on February 26, 2002, Teamsters Local 470 filed a motion to intervene in this matter; however, it withdrew its motion on May 20, 2002 and disavowed any interest in representing the employees in the petitioned-for unit. According to the parties' counsel, this withdrawal followed a ruling by the Teamsters Joint Council 53 Executive Board, issued pursuant to an internal "no raid" agreement, that the Petitioner, not Local 470, was entitled to seek to represent the employees.

⁵ The Petitioner refers to this position as Outbound Clerk.

⁶ The Petitioner refers to this position as Inventory Control Clerk.

⁷ The Petitioner refers to this position as Motor Vehicle Facility Clerk.

⁸ The Bridgeport Agreement covers the period from October 1, 2001 through October 1, 2004.

⁹ There are six Warehouse Clerks at the Bridgeport Facility.

excluded because it has money collection responsibilities that align the position more with management than with unit employees and that the Slot Coordinator position should be excluded as managerial. The Employer asserts that the positions of Fleet Maintenance Clerk and Will Call Clerk have been permanently discontinued, and therefore these positions should not be included in the bargaining unit. It further contends that the two employees in those positions have been permanently laid off with no reasonable expectancy of recall and are ineligible to vote. Finally, the Employer contends that the Fleet Maintenance Clerk position does not share a community of interest with the other employees in the proposed unit. The Petitioner has indicated that it will proceed to an election in any unit that the Board finds appropriate.

Operations at the Swedesboro Facility and the Bridgeport Facility

The Bridgeport Facility is located about five miles from the Swedesboro Facility. The two facilities are similar in size and physical layout and handle similar products, and the Employer is in the process of integrating their operations. In the near future, there will be very few differences in the types of products each facility offers or the type of customer with which they do business. According to David Ickes, the Employer's Regional President for the Northeast Region, after every USF acquisition or merger there is a transition period during which the company seeks to integrate its distribution network with the newly acquired company. US Foodservice also seeks to create the appearance of a single company by maintaining consistent signage on buildings, truck logos, business cards, letterheads, and employee uniforms. Pursuant to this objective, both the Bridgeport and Swedesboro facilities have property signs bearing the USF name, and the letterhead, business cards, stationery, and envelopes at the Swedesboro Facility have been converted to the USF logo. In addition, as inventories of paper, invoices, and paychecks are depleted, they are replaced with new printed material bearing the name U.S. Foodservice. Although much of the former Alliant truck fleet still bears the Alliant logo, USF has contracted for the removal of the Alliant logos and installation of United Food Service logos; as of two weeks before the hearing, two of Alliant's trucks had been converted.¹⁰

The Employer intends to implement a uniform platform for its computer system. Before acquiring Alliant, USF employed a computer mainframe system referred to as the "P system." With the acquisition of Alliant, however, the Employer decided to use Alliant's "A system" for both facilities in the Philadelphia Division. In accordance with that decision, the Employer has begun converting the Bridgeport Facility's computer system to match that of the Swedesboro Facility. Once the conversion, which at the time of hearing was slated for June 22, 2002, is complete, the clerks at both facilities will be working on the same system. The conversion will also allow the Employer to centralize its purchasing activity.

By the first week of July, USF intended to have one Financial Department for both facilities located at the Swedesboro Facility. This move would require the transfer of the seven or eight employees who have been working in the Financial Department at the Bridgeport Facility. The Employer has stopped maintaining separate financial and accounting systems for the Bridgeport and Swedesboro Facilities and is instead using the same financial reporting and accounting systems for both. Beginning in January 2003, payroll for the two facilities will be merged. Within that same time frame, USF also intended to consolidate the Purchasing Departments for the two facilities into one department, with employees in that department

¹⁰ According to Ickes, there has been some delay in changing the logos because the changes cannot be made until the trucks are not in use.

responsible for both facilities and each buyer assigned to purchase products for both facilities. All of the buyers, including the 11 currently at Swedesboro, will work out of the Bridgeport Facility. Senior Vice-President of Operations for the Philadelphia Division Debra Lebb testified that the Employer also plans to consolidate its customer service and marketing departments. The Employer has also named a single Vice-President of Sales for the Philadelphia Division, who is in charge of both facilities.

To date, there has been no interchange of employees in the petitioned-for unit between the facilities. Because the Employer intends to use Alliant's computer platform at the Bridgeport Facility, however, the Employer has sent the Bridgeport Warehouse Clerks, Receiving Clerk and Returns and Refusals Clerks to the Swedesboro Facility to train on the new system. With the implementation of the new computer platform, USF will be cross training employees from both facilities. Although there is currently no interchange of staff, following the computer conversion, employees from both facilities will all be performing the same job function and could conceivably become interchangeable. At that point, USF might transfer employees to either facility if one of them was short-handed.

The employees at the Swedesboro Facility continue to be covered by the Alliant pension plan, 401(k) plan, and health and welfare plans. All of the employees there, both union and nonunion, are covered by Alliant's pension plan. However, the bargaining unit employees represented by Teamsters Local 628 have a different health plan than the unrepresented employees. According to Ickes, the Employer is considering plans to homogenize employee benefits company-wide, but to date the employees at Swedesboro remain covered by Alliant benefits plans. The Employer also intends to consolidate its workers compensation coverage into one carrier but has not yet done so.

The Swedesboro Facility continues to have its own Human Resources Department, as does the Bridgeport Facility. According to Lebb, the Employer plans to consolidate those two departments, to be housed in one building and overseen by its Regional Human Resources representative, but it has not yet done so. National USF personnel policies will soon cover all divisions, including the Philadelphia Division. Nonetheless, while the Employer will eventually begin applying its employee handbook at the Swedesboro Facility, as of the date of the hearing it is still using the Alliant employee handbook.

Management Hierarchy

Debra Lebb has been the Senior Vice-President of Operations for USF's Philadelphia Division since May 20, 2002.¹¹ She is responsible for operations at both facilities, including warehousing, transportation, the physical plants, inbound and outbound activity, sanitation, and labor relations.¹² Lebb reports directly to the President of the Philadelphia Division.

Other managers work exclusively at either the Swedesboro Facility or the Bridgeport Facility, including John Teixeira, the Vice-President of Operations at the Swedesboro Facility, who reports to Lebb. Among other things, he handles grievances, although Lebb is copied on all

¹¹ Prior to her appointment to this position, Lebb served as Vice-President of Operations for USF's Philadelphia Division, which at that time consisted only of the Bridgeport Facility.

¹² On labor and employment matters, Lebb also consults with the Employer's Human Resources Advisor and its attorney.

correspondence concerning grievances and retains the ultimate authority as to the Employer's position on any grievance.

On the day shift, there are two Warehouse Supervisors at the Swedesboro Facility. They report to Jerry Cropmen, the Swedesboro Facility's Director of Warehousing, and supervise the clerks and warehouse employees. On the night shift, there are three Warehouse Supervisors who report to Jay Banks, the Night Operations Manager. The Warehouse Supervisors direct the Swedesboro Night Warehouse Selectors, who pick product and load the trucks at night, as well as some of the Warehouse Clerks. Both Cropmen and Banks report to Teixeira, as do the Transportation Managers and Supervisors at the Swedesboro Facility. The Employer intends to maintain these positions, all of which carry with them the authority to discipline employees.

Night Operations Manager Banks is responsible for both facilities. Lebb testified that the Employer plans to appoint a Day Operations Manager in the near future to oversee both facilities. Banks shares an office with Lebb at the Swedesboro Facility and also has an office at the Bridgeport Facility. For the four to five weeks preceding the hearing, Banks spent about 80% of his time at the Swedesboro Facility and 20% at Bridgeport. According to Lebb, Banks spends additional time at the Swedesboro Facility because there are more problems there than at the Bridgeport Facility. Lebb spends about 75% of her time in Swedesboro and 25% at Bridgeport. Their ultimate goal is to split their time evenly between the two facilities, with offices and assistants at each location.

The managerial structure at the Bridgeport Facility corresponds to that of the Swedesboro Facility in certain respects. Thus, there are three Night Supervisors and a Day Warehouse Manager. There is, however, no Director of Warehousing at Bridgeport, and the position of Vice-President of Operations is currently unoccupied. According to Lebb, the Employer intends to maintain separate warehousing functions at the respective locations as well as separate Managers and Supervisors of Transportation.

There are about 110 drivers working out of the Swedesboro Facility, all of whom report to three or four Transportation Supervisors. There are about 90 warehouse employees in Local 628's extant bargaining unit at the Swedesboro Facility.

The Bridgeport Facility has about 87 drivers, all of whom report to a Transportation Manager, and roughly 70 warehouse employees. Its night staff reports to Banks, and the day staff reports to a Day Warehouse Manager, who reports to Lebb. Bridgeport employs six Warehouse Clerks who are represented by Teamsters Local 470. The remaining clerks at the Bridgeport Facility are unrepresented, including Inventory Control employees, Returns and Refusals Clerks, and a Receiving Clerk. There are also Transportation Clerks at Bridgeport, although their responsibilities are somewhat different from those of the Transportation Clerk at the Swedesboro Facility.

Employees in the Petitioned-for Unit at the Swedesboro Facility

Transportation Clerk

The Transportation Clerk, Jamie Mood, is responsible for collecting and counting drivers' daily receipts of cash and checks, collecting drivers' manifests and invoices, obtaining approval for drivers' personal days from managers, and preparing reports on the KDAK units,

which are tracking devices in the drivers' trucks.¹³ Mood works in an interior office in the transportation hub and reports to Transportation Manager Jim Bartola. Her office is near the warehouse office, and she frequently communicates with the Night Warehouse Clerks and the warehousing staff. The pay range for the Transportation Clerk is about \$10 to \$13 per hour.

Receiving Clerk

Susan Williams, the Receiving Clerk, is responsible for all paperwork for incoming freight. After over-the-road drivers for outside vendors deliver their documents to her, she generates the necessary paperwork and sends invoices to the front office to be paid. At the end of the shift, Williams also processes the final paperwork for the shift. If there is a receiving error on the dock, Williams tracks and reports it to the Warehouse Supervisor. When she reports a shortage of product, an employee may be disciplined if it is determined that he or she did not prepare an accurate report. Williams reports to Day Warehouse Supervisor Les Gunenhouser. The rate of pay for her position ranges from \$10 or \$11 per hour to \$14 per hour.

Returns and Refusals Clerks

Upon receiving paperwork from drivers indicating shortages, "mispicks," or damaged product, Returns and Refusals Clerks John Klenk and Pablo Pena input that information into the computer. From there, the Financial Department investigates the reason for the problem. According to the Employer, the Returns and Refusals Clerks' reporting function is critical to preventing or curbing loss of product to the company. However, the clerks bear no personal responsibility for investigating these problems; they merely record the information, which is then passed on to a Transportation Supervisor or the Warehouse Manager who conducts the investigation. The Returns and Refusals Clerks work evening hours, overlapping both the day and night shifts. They are supervised by Jay Birch, Vice-President of Finance, and earn from \$10 to \$13 per hour.

Cycle Counters

Cycle Counters Tom Monahan and Bill Boldinger work in the warehouse, counting items, verifying inventory, and checking the dates on coded product. Every item in the warehouse is kept in a storage space called a "slot," and the Cycle Counters count the items in the slots to determine whether the Employer has received or shipped the wrong product. Based on their counts, the Cycle Counters generate daily reports. They also verify shortages on trucks, damaged product, and all other problems recorded by the Returns and Refusal Clerks the previous night. If they discover discrepancies, they notify the head of the Employer's Procurement and Finance Department. They have a cubicle in the Purchasing Department, where they do most of their paperwork. Although they report to the Finance staff, in particular to Inventory Control Supervisor Jason Bachofer, they interact more frequently with the warehouse staff. Cycle Counter Clerks earn from \$11 to \$13 per hour.

Slot Coordinator

Slot Coordinator Jason Laino is responsible for placing incoming product into the proper slot, as well as investigating situations where the computer incorrectly indicates that a slot is

¹³ These reports ensure that the drivers have properly recorded the data collected by the units.

available for product storage. The Slot Coordinator is the only salaried position among the clerks and interacts with both day shift employees and the Day Warehouse Manager. While the position requires familiarity with Microsoft's Excel software and the ability to use computer spreadsheets, there is no educational requirement. Like the Receiving Clerk, Laino is supervised by Day Shift Warehouse Supervisor Gunenhouser. Laino earns approximately \$32,500 per year.

Night Warehouse Clerks

The two Night Warehouse Clerks, Lisa Myers and Sonja Perez: distribute work assignments for the Warehouse Selectors; key in the weights of items that are sold by weight; adjust certain orders to ensure that the customer receives an accurate invoice; generate invoices; gather manifests, hazardous materials sheets and driver trip reports for the drivers; and research “warehouse cuts,” which are discrepancies between the computer inventory and actual inventory. According to Teixeira, while they “technically” report to Banks, they have considerable interaction with Night Warehouse Supervisor Ron Hopkins-Bay. They earn between \$11 and \$13 an hour.

Will Call Clerk and Fleet Maintenance Clerk

Will Call Clerk Bernice Stein and Fleet Maintenance Clerk Christola Williams were laid off by Teixeira on February 16, 2002. As Will Call Clerk, Bernice Stein’s primary function was to retrieve orders from the computer for the Will Call Selector. She also maintained a log for Will Call customers, requested them to sign off on invoices, and collected checks for COD purchases and logged their receipt. Stein worked in the main operations office with Laino, and was supervised by Marie McLaine, then Day Warehouse Supervisor.¹⁴ For Stein’s position, the pay range was about \$9 to \$12 an hour.

Christola Williams served as the Fleet Maintenance Clerk in the Fleet Maintenance Department. The Swedesboro Facility has a fleet maintenance garage separate from the main facility, where preventative maintenance and repairs are performed on equipment, tractors and trailers. Williams earned between \$10.50 and \$11 an hour; the pay range for the position was about \$9 to \$11 an hour. She reported to Fleet and Building Maintenance Manager Jim Wilkerson.

At the time of their layoff, Teixeira told Stein and Williams that the Employer had not been performing well and was eliminating their positions as part of an overall cost-cutting program. A human resources manager explained to them their legal rights and presented them with a severance agreement, which would provide them severance pay. She encouraged them to seek legal counsel as to the agreement, told them their deadline for signing the agreement, and advised them of their COBRA rights. Both women signed the severance agreements. According to company witnesses, there is no expectation that the women’s positions will be reconstituted. Stein’s responsibilities are now split between Slot Coordinator Jason Laino and Receiving Clerk Susan Williams.¹⁵ The tasks formerly performed by Christola Williams have been distributed to the Fleet Maintenance Manager and the Transportation Clerk.

¹⁴ As of the date of hearing, McLaine was out of work with a medical disability.

¹⁵ As of the date of hearing, a temporary employee was filling in for Laino, who was absent from work for several weeks due to a medical issue. As a result, that temporary worker was performing some of Stein’s former responsibilities.

Analysis and Conclusions

Contract Bar

The Employer contends that the Bridgeport Agreement covering Warehouse Clerks bars further processing of the petition. The Board has held that a pre-existing contract can be extended to a newly acquired facility and bar a petition seeking an election among the employees of that facility only if the unit at the separate facility is, in fact, an accretion to the existing unit. *Kroger Co.*, 219 NLRB 388 (1975); *Melbet Jewelry Co.*, 180 NLRB 107 (1969).

As to the latter issue, “[t]he Board has defined an accretion as the ‘addition of a relatively small group of employees to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate identity.’” *Progressive Service Die Co.*, 323 NLRB 183, 186 (1997) (quoting *Safety Carrier, Inc.*, 306 NLRB 960, 969 (1992)). In order to preserve the rights of employees to choose their own bargaining representative, the Board follows a restrictive policy in finding accretions to existing units. *Archer Daniels Midland Co.*, 333 NLRB No. 81, slip op. at 3 (2001); *ATS Acquisition Corp.*, 321 NLRB 712, 713 n.3 (1996). Accordingly, the Board will not find an accretion when the employee group to be accreted would constitute a separate appropriate bargaining unit. *Passavant Retirement and Health Center*, 313 NLRB 1216, 1218 (1994).

In determining whether there has been an accretion, the Board examines such factors as the integration of operations, centralization of management and administrative control, geographic proximity, similarity of working conditions, common control of labor relations, collective-bargaining history, and interchange of employees. *Archer Daniels Midland Co.*, supra; *Ryder Integrated Logistics, Inc.*, 329 NLRB 1493, 1499 (1999); *GHR Energy Corp.*, 294 NLRB 1011, 1051 (1989), enfd. 924 F.2d 1055 (5th Cir. 1991). Considering these factors, I find that the Warehouse Clerks at the Swedesboro Facility are not an accretion to the Warehouse Clerks unit at the Bridgeport Facility. Most significantly, there has been no interchange of employees in the petitioned-for classifications between the two facilities. Although there are some common classifications of plant clericals, the Swedesboro employees have worked exclusively at Swedesboro. Additionally, the Employer has not fully integrated the operations in the Philadelphia Division, and the employees at the Swedesboro Facility continue to be covered by separate employee policies and benefit plans. While there is common overall management over both facilities, each facility continues to maintain its own Human Resources Department, and most of the immediate supervisors of the employees in the petitioned-for unit have authority over only the Swedesboro Facility. Although the Night Warehouse Clerks technically report to Banks, who has authority over both facilities, they interact primarily with the lead Night Warehouse Supervisor at the Swedesboro Facility. Additionally, while the Returns and Refusals Clerks and the Cycle Counters report to supervisors in the Finance Department, these supervisors are based at the Swedesboro Facility, and there is no evidence that they have authority over Bridgeport employees. Although the two facilities’ proximity to one another favors a finding of accretion, I find that the other factors considerably outweigh it.

Appropriateness of the Unit

The Employer makes an alternative argument that even if there is no accretion and contract bar, the only appropriate unit is a two-facility unit of Warehouse Clerks in the

Philadelphia Division, comprising both the six Warehouse Clerks at the Bridgeport Facility and the two Night Warehouse Clerks at the Swedesboro Facility. This argument also fails.

As the Board recently stated in *Bartlett Collins Co.*, 334 NLRB No. 76 (2001), the Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry ends, as it is well settled that the unit need only be *an* appropriate unit, not the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 419 (1950), *enfd.* on other grounds, 190 F.2d 576 (7th Cir. 1951). Moreover, a single location unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *Courier Dispatch Group*, 311 NLRB 728 (1993); *Globe Furniture Rentals*, 298 NLRB 288 (1990). To determine if the presumption has been rebutted, the Board looks to factors similar to those considered for accretion, i.e., central control of labor relations, including the extent of local autonomy; similarity in employee skills, functions and working conditions; degree of employee interchange; distance between locations; and bargaining history, if any. *Bowie Hall Trucking, Inc.*, 290 NLRB 41, 42 (1988); *Sol's*, 272 NLRB 621 (1984).

The Employer has failed to rebut the presumption that the petitioned-for unit of plant clericals at the Swedesboro Facility is an appropriate unit. Thus, while the plant clericals at the Swedesboro Facility interact with each other on a regular basis, they have virtually no contact with the plant clericals at Bridgeport except for very limited periods of training that will not continue beyond implementation of the computer system conversion. Additionally, although the plant clericals at the two facilities perform similar types of work, they are subject to different terms of employment, including benefits and employee handbooks. Finally, although there is evidence that Lebb has overall authority over the operational and labor relations policies at both facilities, the supervisors assigned to the respective facilities also retain authority over the employees and in particular possess the ability to discipline them. Therefore, the Swedesboro facility has sufficient local autonomy to find that the single location unit presumption has not been rebutted. *J&L Plate, Inc.*, 310 NLRB 429 (1993); *Esco Corp.*, 298 NLRB 837, 839 (1990).

Classifications in the Petitioned-For Unit

Returns and Refusals Clerks, Receiving Clerk, Cycle Counters, and Slot Coordinator

The Employer contends that employees in these classifications should be excluded from the bargaining unit because they count cash or have monitoring and/or reporting functions with respect to other employees and may be in an adversarial position to them. I find that this argument lacks merit. As noted above, all of the plant clericals in the petitioned-for unit share a substantial community of interest in that they perform similar job functions, possess similar skills, and share common terms and conditions of employment. To the extent they are required to report information concerning shortages, mispicks or damaged product, or to count cash, I conclude that these responsibilities do not require their exclusion. In asserting that these classifications should be excluded, the Employer relies entirely on *Virginia Manufacturing Co.*, 311 NLRB 992 (1993), a case in which the Board excluded a production control clerk from a production unit, in part, because "certain of his monitoring duties have the potential of placing him in an adversarial position to the interest of the production employees." This case, however, is inapposite. There, unlike here, the excluded employee not only generated reports about unit

employees' productivity but actively investigated their productivity problems.¹⁶ Because the employees here do not have any such investigative function, but instead merely report information to supervisors that has been conveyed to them by other employees, their interests are not similarly adverse to other employees.¹⁷ In this regard, in other circumstances the Board has included plant clerical employees in units although they were responsible for monitoring or reporting about other unit employees. See e.g., *Caesars Tahoe*, 337 NLRB No. 270 (2002); *Syracuse University*, 325 NLRB 162, 168 (1997). Moreover, in *Virginia Manufacturing Co.*, supra, the employee had monitoring responsibilities over employees in the petitioned-for production unit, whereas in this case any monitoring functions involve warehouse employees who are outside the unit.

With respect to the Employer's further contention that the Receiving Clerk is an office clerical position, the Receiving Clerk reports to a Warehouse Supervisor. In addition, the job functions of the Receiving Clerk primarily involve preparing documents related to products brought into the facility, duties more typical of plant clericals than office clericals. Accordingly, the Employer's contention is without merit.

I also reject the Employer's assertion that Slot Coordinator is a managerial position. Although Laino, unlike other employees in the unit, is paid by salary, his decision-making authority is strictly limited and falls far short of that necessary to establish managerial status. *NLRB v. Yeshiva University*, 444 U.S. 672 (1980).

Fleet Maintenance Clerk and Will Call Clerk

Finally, the Employer asserts that the positions of Fleet Maintenance Clerk and Will Call Clerk at the Swedesboro Facility have been permanently eliminated and that the employees who held those positions, Bernice Stein and Christola Williams, have been laid off with no reasonable expectancy of recall, rendering them ineligible to vote. Employees who have been laid off will be found eligible to vote notwithstanding their layoff if there is a reasonable expectancy that they will be recalled to work. The Board examines several factors in determining whether an employee has a reasonable expectancy of recall, including the employer's past experience and future plans, the circumstances surrounding the layoff and what the employee was told about the likelihood of recall. *Osram Sylvania Inc.*, 325 NLRB 758, 760 (1998). Here, the Employer presented un rebutted evidence that Stein's and Williams' positions of Will Call Clerk and Fleet Maintenance Clerk have been eliminated and that these individuals entered into severance agreements with the company. There is no evidence that either individual was told that she might be recalled to employment at a later date. In light of this evidence, I find that Stein and Williams have no reasonable expectancy of recall, and therefore I am excluding their former positions from the bargaining unit and finding that they are ineligible to vote in any representation election.¹⁸

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

¹⁶ Indeed, on his own initiative, he would time the production employees' work and suggest possible changes in their production standards to his supervisor.

¹⁷ Additionally, the employee was found to be an office clerical employee, not a plant clerical.

¹⁸ In view of this finding, it is unnecessary to consider the Employer's alternative contention that the Fleet Maintenance Clerk does not share a community of interest with other employees in the unit.

All full-time and regular part-time plant clerical employees at the Employer's Swedesboro, New Jersey facility, including Transportation Clerk, Returns and Refusal Clerks, Receiving Clerk, Slot Coordinator, Cycle Counters, and Warehouse Clerks, excluding all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,¹⁹ subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 628, AFL-CIO

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the **full** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region Four within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **October 1, 2002**.

¹⁹ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **October 8, 2002**.

Signed: September 24, 2002

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
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